IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.235 of 2002

Smt. Hirabai Dashrath Bhatti — Appellant
Vs.
Narsing Maniksing Rathod & ors. — Respondents

Mr.A.A.Kumbhakoni for appellant.

Mr.G.S.Godbole for respondent no.1, 2(B), 2(C), 2(E) and 2(G).

CORAM: B.H.MARLAPALLE,J.

March 26, 2007.

P.C.

. Heard Mr.Kumbhakoni, the learned counsel appearing for the appellant - original defendant no.1 in Regular Civil Suit No.687 of 1994. The said suit was filed for partition and separate possession of 1/3rd share in the suit property. As per the plaintiff, he and defendant no.2 are two sons of Maniksing Rathod and defendant no.1 is their step-sister (half sister). He further stated that Maniksing was initially married to the mother of defendant no.1 and after giving birth to defendant no.1, within a period of about two years her mother died and consequently Maniksing married to Chandrabai, the mother of plaintiff and defendant no.2. He further claimed that he was born on

14/9/1934 and within few years therefrom defendant no.2 was born. The defendant no.1 opposed the said suit by contending that her father during his life time never married Chandrabai and he was staying alone till he died on 10/1/1979. His last rites were completed by his nephew and not by either the plaintiff or defendant no.2. As per the defendant no.1, the plaintiff and his brothers were aliens to the suit property and, therefore, the plaintiff could not claim 1/3rd share in the suit property.

. The trial Court considered the documentary evidence viz. certified copy of extract of property at Exh.24, certified copy of Sathekhat at Exh.25, a copy of the notice dated 21/3/1994 at Exh. 28, the birth certificate of the plaintiff at Exh. 27 and the letter from D.D.L.R. at Exh. 26 and held that the plaintiff proved that he was son of late Maneksing Rathod and defendant no.1 was his step-sister. The trial Court further held that the plaintiff had 1/3rd share in the property and it could not be proved by the defendant no.1 that she was the exclusive owner of the suit property. The lower Appellate Court concurred with the findings recorded by the trial Court and further held that the

view taken by the trial Court was just and proper.

. The evidence on record before the trial Court indicated that the plaintiff and defendant no.2 had submitted an application for mutation of their joint names over the suit house and accordingly the names were mutated. In her evidence before the trial Court the defendant no.1 though denied Maneksing's marriage with Chandrabai, there was nothing on record to hold that Maneksing was not staying with Chandrabai and the plaintiff and defendant no.2 could not be held to be Maneksing's sons from Chandrabai. Though defendant no.2 did not appear and contest the suit, defendant no.1 could not defeat the claim of the plaintiff for his 1/3rd share. The lower Appellate Court once again considered the evidence on the inter se relationship between the parties and agreed with the view taken by the trial Court. The document viz. Sathekhat (agreement to sell) at Exhibit 25 issued by the Sub-Registrar mentioned the names of the plaintiff and defendant no.2 as co-vendors and both of them had signed on the said agreement. This was an additional circumstance to hold that the plaintiff and defendant no.2 are the sons of Maneksing. In addition as noted earlier, in the property card extract at Exhibit 24 the names of all the three

children of Maneksing were recorded i.e. the plaintiff and both the defendants.

. The issue regarding the inter se relationship between the parties being an issue purely of fact and has been accordingly held in favour of the plaintiff by both the Courts below, no other substantial question of law arises for consideration in this Second Appeal and hence the same must fail.

. The Second Appeal is dismissed.

. For the sake of clarification it is hereby stated that the issue of partibility or otherwise will have to be considered in the course of execution of the decree.

(B.H